

AMENDED IN ASSEMBLY SEPTEMBER 12, 2009

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

SENATE BILL

No. 827

Introduced by Senator Wright

March 19, 2009

An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately. *District.*

LEGISLATIVE COUNSEL'S DIGEST

SB 827, as amended, Wright. South Coast Air Quality Management District: CEQA: permits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air

contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would authorize the district to issue permits under specified circumstances, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

~~(3) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As a result of the superior court decision in *Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District* (Super. Ct. Los Angeles County, 2007, No.
6 BS 110792) holding that the South Coast Air Quality Management
7 District (district) violated the requirements of the California
8 Environmental Quality Act (CEQA) (Division 13 (commencing
9 with Section 21000) of the Public Resources Code) in the
10 promulgation of certain district rules, the district is unable to issue
11 over a thousand pending permits that rely on the district's internal
12 offset bank to offset emissions.

13 (b) The district may also have to set aside several thousand
14 permits that were previously issued in reliance on the district's
15 internal offset bank.

16 (c) Prompt legislative action is necessary as an interim measure;
17 otherwise projects will be stopped from going forward or frozen
18 in place, representing significant losses to the economy and the
19 loss of numerous well-paying jobs.

(d) Nothing in the case described in subdivision (a) requires the setting aside of any permit issued by the South Coast Air Quality Management District to any essential public service, that relied on Rule 1309.1, nor any permit that relied on Rule 1304, between September 8, 2006, and November 3, 2008.

(e) Section 40440.13 of the Health and Safety Code is not intended to affect any pending litigation challenging the district's internal offset accounts in federal court, or to give an advantage to a party in that litigation.

(f) The district shall have the authority to carry out the provisions of this act.

SEC. 2. Section 40440.13 is added to the Health and Safety Code, to read:

40440.13. (a) Notwithstanding the decision of the court in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the south coast district may issue permits in reliance on, and in compliance with, south coast district Rule 1304, as amended on June 14, 1996, ~~except for an electrical generation facility~~, and Rule 1309.1, as amended May 3, 2002, for essential public services, as defined in subdivision (m) of Rule 1302, as amended December 6, 2002.

(b) Nothing in this section affects the decision in the case described in subdivision (a) concerning the adoption, readoption, or amendment, or environmental review, of south coast district Rule 1315.

~~(c) In implementing subdivision (a), the south coast district shall rely on the emission reduction credit tracking system used prior to the adoption of Rule 1315, until a new tracking system is approved by the United States Environmental Protection Agency and is in effect, at which point that new system shall be used by the south coast district in implementing subdivision (a). The south coast district shall make information concerning the credits, and the tracking of these credits, available to the public.~~

(c) (1) In implementing subdivision (a), the south coast district shall rely on the offset tracking system used prior to the adoption of Rule 1315 of the south coast district until a new tracking system is approved by the United States Environmental Protection Agency and is in effect, at which point that new system shall be used by the south coast district.

(2) *In addition to using the prior offset tracking system, the district shall also make use of any emission credits that have resulted from emission reductions and shutdowns from minor sources since 1990. The district shall make any necessary submissions to the United States Environmental Protection Agency with regard to the crediting and use of emission reductions and shutdowns from minor sources.*

(d) This section shall remain in effect only until May 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before May 1, 2012, deletes or extends that date.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances concerning the South Coast Air Quality Management District.

~~SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~Due to the court decision in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the South Coast Air Quality Management District is unable to issue over a thousand pending permits that are either exempt from offset requirements or qualified to use offset credits from the district's Priority Reserve and is required to set aside thousands of permits already issued. Therefore, in order to allow the district to issue permits in an expeditious manner as an urgent interim measure, it is necessary that this act take effect immediately.~~